U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals, MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

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FILE: [redacted] Office: TEXAS SERVICE CENTER Date: MAR 1 5 2010
SRC 07 280 51532

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

Mari Johnson

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the employment-based immigrant visa petition, which is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks classification pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as an alien of exceptional ability or a member of the professions holding an advanced degree. The petitioner seeks employment as a research scientist. The petitioner asserts that an exemption from the requirement of a job offer, and thus of an alien employment certification, is in the national interest of the United States. The director found that the petitioner qualifies for classification as a member of the professions holding an advanced degree, but that the petitioner had not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

On appeal, counsel submits a brief. For the reasons discussed below, we uphold the director's decision.

Section 203(b) of the Act states in pertinent part that:

> (2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. --
>
> > (A) In general. -- Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
> >
> > (B) Waiver of job offer.
> >
> > > (i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The petitioner holds a Ph.D. in Neuroscience from the University of Medicine and Dentistry of New Jersey (UMDNJ). The petitioner's occupation falls within the pertinent regulatory definition of a profession. The petitioner thus qualifies as a member of the professions holding an advanced degree. The remaining issue is whether the petitioner has established that a waiver of the job offer requirement, and thus an alien employment certification, is in the national interest.

Neither the statute nor pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of the phrase, "in the national interest." The Committee on the

Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

A supplementary notice regarding the regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (Nov. 29, 1991), states, in pertinent part:

> The Service believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

Matter of New York State Dep't. of Transp., 22 I&N Dec. 215, 217-18 (Comm'r. 1998) (hereinafter "NYSDOT"), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, it must be shown that the alien seeks employment in an area of substantial intrinsic merit. *Id.* at 217. Next, it must be shown that the proposed benefit will be national in scope. *Id.* Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications. *Id.* at 217-18.

It must be noted that, while the national interest waiver hinges on *prospective* national benefit, it clearly must be established that the alien's past record justifies projections of future benefit to the national interest. *Id.* at 219. The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The inclusion of the term "prospective" is used here to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative. *Id.*

We concur with the director that the petitioner works in an area of intrinsic merit, cell cycle research, and that the proposed benefits of his work, improved understanding of cell proliferation and regulation as it relates to cancer and stem cell therapies, would be national in scope. It remains, then, to determine whether the petitioner will benefit the national interest to a greater extent than an available U.S. worker with the same minimum qualifications.

Eligibility for the waiver must rest with the alien's own qualifications rather than with the position sought. In other words, we generally do not accept the argument that a given project is so important that any alien qualified to work on this project must also qualify for a national interest waiver. *NYSDOT*, 22 I&N Dec. at 218. [redacted], an associate professor at UMDNJ, asserts that the petitioner "set up many procedures and assays in the lab for the first time." She further asserts that the petitioner has "advanced knowledge and skills in computational biology" in addition to his

"expertise in medicine and biomedical science." It cannot suffice to state, however, that the alien possesses useful skills, or a "unique background." Special or unusual knowledge or training does not inherently meet the national interest threshold. [redacted] an associate scientist at the Robert S Dow Neurobiology Laboratories of Legacy Research in Portland, Oregon, asserts that there is "a great shortage of outstanding neuroscientists like [the petitioner] in the U.S." The issue of whether similarly-trained workers are available in the United States is an issue under the jurisdiction of the Department of Labor. *Id.* at 221.

At issue is whether this petitioner's contributions in the field are of such unusual significance that the petitioner merits the special benefit of a national interest waiver, over and above the visa classification he seeks. By seeking an extra benefit, the petitioner assumes an extra burden of proof. A petitioner must demonstrate a past history of achievement with some degree of influence on the field as a whole. *Id.* at 219, n. 6. In evaluating the petitioner's achievements, we note that original innovation, such as demonstrated by a patent, is insufficient by itself. Whether the specific innovation serves the national interest must be decided on a case-by-case basis. *Id.* at 221, n. 7. Finally, the petitioner must establish his eligibility as of the date of filing. *See* 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak,* 14 I&N Dec. 45, 49 (Reg'l. Comm'r. 1971).

One of the petitioner's references, [redacted] of Physiology and Biophysics at UMDNJ, asserts:

> [The petitioner] is an active member in the Society for Neuroscience, [the] Society for Developmental Biology and [the] American Association for Cancer Research. These memberships are only accorded to scientists who possess a documented record of research accomplishments in the area.

Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici,* 22 I&N Dec. 158, 165 (Comm'r. 1998) (citing *Matter of Treasure Craft of California,* 14 I&N Dec. 190 (Reg'l. Comm'r. 1972)). The petitioner submitted his 2004 and 2006 membership cards for the Society for Neuroscience as well as an August 16, 2004 letter accepting the petitioner as a *student* member of the society. The record does not contain the official membership criteria for this society. In response to the director's request for additional evidence, the petitioner submitted evidence of his recent *associate* membership in the American Association for Cancer Research (AACR). First, this membership postdates the filing of the petition and cannot be considered. *See* 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak,* 14 I&N Dec. 45, 49 (Reg'l. Comm'r. 1971). Regardless, the petitioner did not provide the official membership requirements. Significantly, professional memberships are one of the regulatory criteria for aliens of exceptional ability, 8 C.F.R. § 204.5(k)(3)(ii)(E), a classification that normally requires an approved alien employment certification. Section 203(b)(2) of the Act. We cannot conclude that meeting one of those criteria, or even the requisite three criteria, warrants a waiver of that requirement in the national interest. *NYSDOT,* 22 I&N Dec. at 218, 222.

The petitioner submitted several reference letters. On appeal, counsel asserts that the director failed to afford the letters sufficient weight and focused on the speculative assertions by the authors to the exclusion of their assessment of past significance. We will consider these letters in detail below.

As stated above, the petitioner received his Ph.D. from UMDNJ under the direction of [redacted] The petitioner then joined the laboratory of [redacted] at UMDNJ as a postdoctoral fellow. After the date of filing, the petitioner began working in the laboratory of [redacted] also at UMDNJ.

[redacted] explains that Cyclin-dependent kinase inhibitors (CKIs) play an essential role in balancing cell proliferation and death. According to [redacted] the petitioner demonstrated that Cip/Kip family CKIs are required for "timely cell cycle exit" through their impact on positive cell cycle regulators. Specifically, [redacted] states: "With state-of-art techniques and genetic lineage tracing, he showed in his study that prolonged cell proliferation in the absence of Cip/Kip proteins resulted in increased number of growth in both animal models and humans with CKIs mutations." [redacted] explains that this research showed that there are multiple steps involved in nerve cell maturation and "helped us understand when and how a diving pluripotent cell initiates the cell cycle exit and become functional cells." [redacted] explains that this work is not only important for cancer therapies that block cell proliferation or induce differentiation in tumor cells, but also for stem cell research and replacement treatment for spinal cord injury and neurodegenerative disorders such as Parkinson's disease and Alzheimer's disease.

[redacted] notes that the petitioner's work has been funded by the National Institutes of Health (NIH) and the New Jersey Commission on Spinal Cord Injury. The vast majority of research, if not all research, is funded by an outside source. Any research, in order to be accepted for funding, must offer new and useful information to the pool of knowledge. It does not follow that every researcher who is working with a government grant inherently serves the national interest to an extent that justifies a waiver of the job offer requirement.

[redacted] asserts that the petitioner's dissertation work on CKIs has "important implications" in cancer and stem cell research. Specifically, the role of CKIs in arresting cell proliferation "could be applied toward developing novel cancer treatments." In addition, according to [redacted] the petitioner's results showing the role of Cip/Kip proteins in ensuring that the correct type of number of neurons and glial cells are produced from progenitors "could be applied to improve the success of stem cells replacement therapies."

[redacted], an associate scientist at the Robert S. Dow Neurobiology Laboratories of Legacy Research, explains that while stem cell therapy is the only hope for patients suffering from strokes and other neurological disorders, this therapy could be detrimental or even lethal if leading to uncontrolled overgrowth. As the future of stem cell therapy requires tight regulation on cell proliferation, [redacted] concludes that the petitioner's work "is important and necessary."

[redacted], a group leader in the Department of Neuroscience at the Karolinska Institutet in Sweden, explains that she met the petitioner at a conference in 2003. She asserts that the petitioner's dissertation research is original and of "utter importance for the progress of our understanding of how stem cells and progenitor cells control proliferation when they initiate differentiation program/s and develop to mature functional nerve cells." [redacted] further asserts that because loss of Cip/Kip activity is present in some cancers, the petitioner's work "could be useful for the development of improved diagnosis and treatment of human cancers."

[redacted], a professor at Rutgers, the State University of New Jersey, asserts that the petitioner's work with Cip/Kip CKIs "has laid the foundation for future studies that will decipher the regulatory programs controlling the behaviors of progenitors and the generation of mature neurons." [redacted] speculates that the petitioner's studies had not been previously conducted because there "is a functional redundancy and compensation among the three Cip/Kip family members," thus creating a technical challenge to generate animals in which all three genes are missing.

In addressing the petitioner's CKI research, [redacted] asserts: "Although dedicated scientists have worked on this topic for almost two decades, no one has answered before if Cip/Kip are essential for vertebrates due to the complexity of regulation of the cell cycle network." This statement echoes the above assertions that the petitioner's work is original in that it does not duplicate the work of previous scientists. While the petitioner's research is no doubt of value, it can be argued that any research must be shown to be original and present some benefit if it is to receive funding and attention from the scientific community. It does not follow that every researcher who performs original research that adds to the general pool of knowledge inherently serves the national interest to an extent that justifies a waiver of the job offer requirement.

[redacted], the Associate Director of the Developmental Neurobiology Section within the Division of Intramural Research at the National Heart Lung and blood Institute of NIH,[1] similarly asserts that the petitioner is the first researcher to generate compound knockout mice for three CKIs and that this "pioneering work has led to a cascade of new research discoveries in stem cell and cancer research." [redacted] explains the difficulties in creating the knockout mice and notes that the petitioner "overcame these obstacles." [redacted] provides no examples of the "cascade of new research discoveries" resulting from the petitioner's work and does not suggest that NIH is pursuing new research founded on the petitioner's results. Rather, [redacted] simply asserts that those who viewed the petitioner's presentation requested "information and protocols" and that there has been "rapid citations" to the petitioner's work.

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[1] A memorandum from [redacted] for Intramural Research at the National Institutes of Health (NIH), *Clarification on Personal Letters Written in Support of Immigration Visas* (June 15, 2007), allows "personal letters of support" from NIH staff, but "not on NIH letterhead or signed using an official NIH title." [redacted] letter is on NIH letterhead. *See* http://ethics.od.nih.gov/topics/visa-support.pdf (accessed February 4, 2010 and incorporated into the record of proceeding).

The petitioner submitted e-mail correspondence between the petitioner or [redacted] and four other researchers requesting the petitioner's p57 mouse probe, reagents used by the petitioner, details on his antibody and protocol used for b-gal detection and details on the petitioner's p21 and p27 immunostaining. While these e-mails reflect some limited interest in the petitioner's protocols, mostly by graduate students and postdoctoral researchers, a significant number of published articles that cite the petitioner and acknowledge using his protocols would be far more persuasive evidence of a "cascade of new research discoveries" based on the petitioner's results. As will be discussed below, the record does not support [redacted] assertion that there have been "rapid citations" to the petitioner's work.

As noted by several of the above references, the petitioner's work in this area was presented at conferences. For example, [redacted] asserts that the petitioner presented his dissertation work at national meetings of the Society for Neuroscience and Society for Development Biology, "receiving wide recognition and awards." The record contains a May 31, 2003 Poster Prize for outstanding graduate work issued to the petitioner at the Mid-Atlantic Developmental Biology Meeting. Formal recognition for achievements and significant contributions to the field by professional organizations is one of the regulatory criteria for aliens of exceptional ability, 8 C.F.R. § 204.5(k)(3)(99)(F), a classification that normally requires an approved alien employment certification. Section 203(b)(2) of the Act. We cannot conclude that meeting one of those criteria, or even the requisite three criteria, warrants a waiver of that requirement in the national interest. *NYSDOT,* 22 I&N Dec. at 218, 222. Moreover, the petitioner has not demonstrated the significance of poster presentations as compared with oral presentations. In addition, the petitioner was only recognized in comparison with other graduate students. Further, the meeting was limited to the Mid-Atlantic region and is not necessarily consistent with the "wide recognition" claimed by [redacted] Finally, the record contains no evidence as to how many similar awards were issued at this meeting.

The petitioner also received a Research Achievement Award from UMDNJ. Once again, this recognition is not evidence of the petitioner's influence in the field beyond UMDNJ.

[redacted] and [redacted] also note that the petitioner's work was published in a top ranked journal and cited in *Nature Reviews Neuroscience.* We will not presume the influence of an article from the journal in which it appears. Rather, it is the petitioner's burden to demonstrate the influence of the individual article. While the petitioner did submit evidence that he was cited in *Nature Reviews Neuroscience,* he is cited as one of five articles for the proposition that "CKIs also have an important non-cycle role in differentiation." This one citation is not indicative of an influence on the field as a whole. In response to the director's request for additional evidence, the petitioner submitted six additional citations. Of these new citations, one is a self-citation by the petitioner and a second is a citation from another research team at UMDNJ. While self-citation is a normal and expected process, these two citations do not demonstrate any influence beyond UMDNJ. Of the four independent citations submitted in response to the director's request for additional evidence, three postdate the filing of the petition, the date as of which the petitioner must establish his eligibility. *See* 8 C.F.R. §§ 103.2(b)(1), (12); *Matter*

of Katigbak, 14 I&N Dec. 45, 49 (Reg'l. Comm'r. 1971). This citation record does not establish the influence of the petitioner's work on CKIs on the field as a whole.

In addition, [redacted] discusses the petitioner's work on the role of Wnt and Hedgehog signaling pathways during the development of the central nervous system (CNS), both of which are known to be involved in stem cell self-renewal and cancer growth. While [redacted] asserts that the petitioner presented this work, he does not explain how it has influenced the field. [redacted] elaborates:

> [The petitioner] is the leading researcher to pioneer a study of Wnt and Shh Signaling, which are classical developmental pathways that promote cell proliferation and survival. Disrupted signaling resulted in uncontrollable growth and were observed in overlapped spectrum of cancers. His exploration of their activities on cell proliferation and fate determination has facilitated our understanding of cross-talk between signaling pathways. [The petitioner's] seminal findings were elaborated into his presentation at [the] 2007 Mid-Atlantic Regional Meeting of [the] Society for Developmental Biology.

The record contains no letters from independent references utilizing this work, citations of this work or other evidence indicative of the influence of this work in the field as a whole.

[redacted] also discusses the petitioner's postdoctoral research work in [redacted] laboratory. Specifically, [redacted] notes that the petitioner focused on the role of the Prox-1 transcription factor in regulating neurogenesis. [redacted] acknowledges, however, that the petitioner's publication reporting these results was only in preparation. The petitioner submitted an unpublished manuscript on this topic. In response to the director's request for additional evidence, the petitioner submits evidence that this article was published after the date of filing in *Development Dynamics* and was "highlighted" by that journal as an "exciting advance in developmental biology" that was recently reported in that journal.

The petitioner, however, must demonstrate his eligibility as of the date of filing. *See* 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak,* 14 I&N Dec. at 49. In this matter, that means that he must demonstrate his track record of success with some degree of influence on the field as a whole as of that date. All of the case law on this issue focuses on the policy of preventing petitioners from securing a priority date in the hope that they will subsequently be able to demonstrate eligibility. *Matter of Wing's Tea House,* 16 I&N Dec. 158, 160 (Reg'l. Comm'r. 1977); *Matter of Katigbak,* 14 I&N Dec. at 49; *see also Matter of Izummi,* 22 I&N Dec. 169, 175-76 (Comm'r. 1998) (citing *Matter of Bardouille,* 18 I&N Dec. 114 (BIA 1981) for the proposition that we cannot "consider facts that come into being only subsequent to the filing of a petition.") Consistent with these decisions, a petitioner cannot secure a priority date in the hope that his as of yet unpublished research will subsequently prove influential. Ultimately, in order to be meritorious in fact, a petition must meet the statutory and regulatory requirements for approval as of the date it was filed. *Ogundipe v. Mukasey,* 541 F.3d 257, 261 (4th Cir. 2008). Thus, we need not consider the discussions of the

potential of the petitioner's Prox-1 research or his subsequent research with [redacted], which may not have even been initiated as of the date of filing.

The opinions of experts in the field are not without weight and have been considered above. U.S. Citizenship and Immigration Services (USCIS) may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm'r. 1988). However, USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility; USCIS may, as we have done above, evaluate the content of those letters as to whether they support the alien's eligibility. *See id.* at 795. USCIS may even give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Id.* at 795; *see also Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l. Comm'r. 1972)).

We concur with the director that the letters primarily discuss the importance of the area of the petitioner's work and speculate as to its future potential to influence the field. While the letters discuss the beneficiary's work in detail and affirm its importance, they do not provide specific examples of how those contributions have influenced the field other than attesting to citations that are not evident in the record. While we do not question the expertise and sincerity of the petitioner's references, it is difficult to give full evidentiary weight to the necessarily subjective opinions when they are supported by factual claims that are contradicted in the record, such as the statements in the instant case from [redacted] and [redacted] that the petitioner "has already been cited many times" or that there have been "rapid citations" to his work.[2] The authors do not explain how they reach this conclusion given that the record contains seven citations, only five of which are by independent research teams. More specifically, the petitioner failed to submit corroborating evidence in existence prior to the preparation of the petition, which could have bolstered the weight of the reference letters.

As is clear from a plain reading of the statute, it was not the intent of Congress that every person qualified to engage in a profession in the United States should be exempt from the requirement of a job offer based on national interest. Likewise, it does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given profession, rather than on the merits of the individual alien. On the basis of the evidence submitted, the petitioner has not established that a waiver of the requirement of an approved alien employment certification will be in the national interest of the United States.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

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[2] Similarly, [redacted], a professor at UMDNJ, asserts that the petitioner "has been cited many times."

This denial is without prejudice to the filing of a new petition by a United States employer accompanied by an alien employment certification certified by the Department of Labor, appropriate supporting evidence and fee.

ORDER: The appeal is dismissed.